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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.25547 of 2021
and
W.M.P. No. 26964 of 2021

Vinoth Allen Alex

...Petitioner

-Vs-

1. The Co-operative Sub-Register / Sales Officer,
Office of the Deputy Register of Co-operative Society,
No.50, Ritherdon Road, Vepery,
Chennai Region, Chennai - 600 007.
2. The Manager,
The Chennai Metro Metropolitan Housing,
Co-operative Society Limited (Reg 900)
No.50, Ritherdon Road, Vepery,
Chennai - 600 007.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of declaration declaring that the public auction sale notice dated 30.11.2021 issued by the first respondent through the private agent Varma and Company is null and void in respect of the property situated at Survey No.105 in Kathivakkam Municipality, Plot No.38, Indra Nagar 3rd street, Ellaiyamman Kovil Street, Ennore.

For Petitioners : No appearance
For Respondents : Mr.A.Selvendran
Special Government Pleader for R1
Mr.M.R.Murugan
Standing Counsel for R2

O R D E R

The prayer sought for herein is for a Writ of declaration declaring that the public auction sale notice dated 30.11.2021 issued by the first respondent through the private agent Varma and Company is null and void in respect of the property situated at Survey No.105 in Kathivakkam Municipality, Plot No.38, Indra Nagar 3rd street, Ellaiyamman Kovil Street, Ennore.



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2. The case of the petitioner is that, the petitioner availed loan from the respondent Society for construction of dwelling house to the extent of 994 sq.ft. and there has been a due of Rs.7,66,661.99/- payable by the petitioner towards the society and the same though had been intimated by the Society by communications and reminders, since the petitioner could not paid the same, the respondents proceeded to go for a public auction of the property belongs to the petitioner, therefore an auction notice was issued.

3. As per the said auction notice, the public auction was fixed to be conducted on 30.11.2021.

4. Challenging the said public auction notice, this Writ Petition was filed with the aforesaid prayer.

5. On 30.11.2021, exactly this Writ Petition was moved for admission where, this Court after hearing the learned counsel appearing for the petitioner as well as the respondents, passed the following order:

"Mr.Raj Kumar, learned counsel for the petitioner submits that, due to pandemic and also due to the demise of the petitioner's mother, and also that his father suffered paralytic attack, the whole life of the petitioner, according to the learned counsel for the petitioner, has been crippled. Therefore, he could not concentrate to mobilize the amount payable to the second respondent Society by repaying the building loan availed by the petitioner to the tune of Rs.7,66,661/-. With the result, the property of the petitioner, which is the dwelling house, where the petitioner is residing, has been brought for public auction. Therefore, the public auction notice is impugned herein, by which the property in question would be put to public auction today ie., 30.11.2021 at 12.00 Noon.

2. In order to show the bonafide on the part of the petitioner, the learned counsel for the petitioner has come forward to make, with great struggle, at least 50% of the total amount due, i.e., Rs.7,66,661/- and if some more time is given, the further amount would be mobilized and would be paid to the Society, as he wants to save the property from public auction.

3. Mrs.Akila Rajendran, learned Government Advocate takes notice on behalf of the first



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Court by order dated 14.12.2021 passed the following order:

"Though a conditional order has been passed by this Court on 30.11.2021, under which 50% of the demand that is Rs.7,66,661/- was undertaken to be paid by the petitioner on 10.12.2021, till date no such payment has been made. However Mr.Raj Kumar, learned counsel for the petitioner, submitted that, if one more week's time is given certainly the conditional order dated 30.11.2021 would be complied with and the compliance report to that effect would be filed before this Court.

2. As a last chance to the petitioner, this Court is inclined to grant one week time from today to comply with the order of this Court dated 30.11.2021.

3. Post the matter on 22.12.2021, under the caption 'for orders'. Office is directed to print the name of Mr.M.R.Murugan for second respondent." Accordingly, the case is coming up for hearing further today.

7. The learned counsel for the petitioner did not appear today. However, the learned counsel appearing for the respondents submitted that, despite this time has been given by this Court, the conditional order could not be complied with, as the petitioner is not able to mobilize any fund to pay the money.

8. Since the petitioner is due to pay the Society to the extent of Rs.7,66,661/- and in order to recover the money, a public auction notice was issued by the Society, whereby, the public auction was fixed as on 30.11.2021, on the very same date, since the Writ Petition was moved and in order to consider the bonafide on the part of the petitioner, who come forward to pay 50% of amount within a time frame, this Court shown its indulgence by granting stay of the public auction notice. However, the said conditional order has not been complied with and subsequent extension of time of further one week also was given to the petitioner as a last chance, even that was not properly utilized and even till today, the resultant position is that, the petitioner has not even paid a single pie.

9. When that being the position, this Court has not found any plausible reason to interfere with the public auction notice, which is impugned herein. Moreover, by virtue of the stay granted by this Court, the date fixed through the said public auction notice, i.e., on 30.11.2021 also has gone by. Therefore, this Court feels that, this Writ Petition can be rejected with the liberty to the respondents to go ahead with



the public auction by fixing the same by issuing the fresh notice.

10. Accordingly, this Writ Petition is dismissed with the above observations. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mp / vji

To

1. The Co-operative Sub-Register / Sales Officer,
Office of the Deputy Register of Co-operative Society,
No.50, Ritherdon Road, Vepery,
Chennai Region, Chennai - 600 007.
2. The Manager,
The Chennai Metro Metropolitan Housing,
Co-operative Society Limited (Reg 900)
No.50, Ritherdon Road, Vepery,
Chennai - 600 007.

+lcc to Mr.M.Gnanasekar, Advocate, S.R.No.69136
+lcc to the Government Pleader, S.R.No.69553

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and
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PP[co]
NSK 14/02/2022